***THE HON'BLE MR JUSTICE V.V.S.RAO**

+ WRIT PETITION No.21309 OF 2006

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% Dated 17.11.2006

D.Ananthaiah and others

… Petitioners.

VERSUS

$ The State of Andhra Pradesh by Principal Secretary, Industries & Commerce (INF) Department, Secretariat, Hyderabad and others.

… Respondents.

! Counsel for Petitioners: Sri G.Vijaya Kumar

^Counsel for Respondent No.1: G.P. for Industries
Counsel for Respondent No.2: G.P. for Revenue (General)

<GIST:

>HEAD NOTE:

? Cases referred

1. AIR 1997 SC 2703
2. 2000 (6) ALT 337 = 2000 (6) ALD 299
3. (1997) 2 SCC 627
4. (1997) 9 SCC 544
5. (1996) 6 SCC 405
6. (2003) 1 SCC 335
7. (1976) 1 SCC 800
8. (2005) 1 SCC 558

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.21309 OF 2006

DATED NOVEMBER, 2006

BETWEEN:

Sri D.Ananthaiah and others

… Petitioners

AND

The State of Andhra Pradesh by Principal Secretary, Industries & Commerce (INF) department, Secretariat, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.21309 OF 2006

ORDER:

Agricultural land of petitioners admeasuring Acs.8.02 guntas in survey No.223 of Yenugonda village of Mahabubnagar Mandal and District was acquired in 1965 for M/s.Suryalaxmi Cotton Mills Company Limited, the third respondent herein. During the acquisition as required under Section 41 of the Land Acquisition Act, 1894 (the Act, for brevity), the third respondent executed an agreement, dated 24.09.1965, with the Government of Andhra Pradesh. Clause 3(d) thereof obligates third respondent to use the land for construction of quarters of the employees and purposes incidental to industrial activity within a period of three years from the date of transfer of land to third respondent. The allegation is that third respondent did not use the land within three years. The petitioners filed W.P.No.6298 of 1990 seeking reconveyance of land but Division Bench of this Court dismissed the writ petition giving liberty to petitioners to seek redressal before the Government by making an application. The petitioners then filed an application to the District Collector for restoration of land, which is said to be still pending.

In the meanwhile, third respondent executed a gift deed in favour of fifth respondent, Society, but subsequently filed a suit being O.S.No.34 of 1984 for declaration to nullify the same gift deed, dated 10.06.1977 in favour of fifth respondent. The suit was dismissed on 26.08.1994, against which an appeal being A.S.No.1596 of 1994 before this Court is still pending. During pendency of the said appeal, third respondent made an application to the Government to extend time limit for two years in relaxation of clause 3(d) of the agreement executed by them under Section 41 of the Act. On due consideration of the same, the Government issued G.O.Ms.No.695, dated

15.10.2005, extending time limit for a period of two years from the date of issue of said order. Assailing the same, petitioners filed the present writ petition for its invalidation as being violative of Article 21 of Constitution of India and for a consequential direction to respondents to re-transmit the land in survey No.223 to the petitioners.

Learned counsel for petitioners vehemently contends that the impugned Government Order extending time limit in favour of third respondent is without power and illegal. He would urge that the same is vitiated by legal malice as the Government allowed time limit for extraneous reasons. He submits that as the third respondent has not utilised the land for a period of over forty years, the petitioners have an enforceable right to seek
reconveyance of the land. According to the learned counsel as per Rule 5(3) of the Land Acquisition (Companies) Rules, 1963, third respondent could not have transferred land to fifth respondent without prior sanction of Government. **Per contra**, learned Assistant Government Pleader for Industries submits that when once the land is acquired duly paying compensation as awarded by Land Acquisition Officer (LAO), the land owner has no right to seek reconveyance nor the Government has such power to reconveyance. Learned counsel for petitioners and the learned Assistant Government Pleader have placed reliance on decisions of this Court as well as Supreme Court in support of their contentions.

Two points need to be examined. Whether the Government is entitled to take back the land from third respondent for violation of conditions of agreement under Section 41 of the Act? And whether after resuming the land from the third respondent, the Government has any duty to restore/reconvey the land to the petitioners, who claimed right for such reconveyance?

The impugned Government Order was issued in October, 2005 extending time limit for a period of two years making it very clear that such extension is granted as a last chance and violation would result in resumption of the land by the Government. No further reasoning would be required as an answer to the first question that the Government can always resume the land if the beneficiary fails to utilise the land. Needless to mention that the agreement executed by the Government in favour of third respondent provides for such an eventuality. This aspect of the matter, however, would be purely academic because as at present there is no factual background warranting exercise of such power by the Government or warranting a Mandamus in that direction. To say what the Government or the public authority should do in future in a given factual situation is not province of judicial review nor it would be appropriate.

Insofar as the right of the petitioners to seek reconveyance or the duty of the State to restore the acquired land remaining unutilised is a matter, which is no more *res integra.* A person whose land is acquired has no enforceable right to seek reconveyance. This principle is well-settled. Having regard to the provisions of Sections 23, 23(1A) and 30 of the Act, Supreme Court in **State of Kerala v Bhaskaran Pillai**[1] held that no land owner is entitled for reconveyance after acquisition. In **Koppula Narasaiah v Government of Andhra Pradesh**[2], I have considered this and having regard to the law laid down by the Supreme Court in **State of Kerala v Bhaskaran Pillai** (supra), **C.Padma v Deputy Secretary to Government of Tamil Nadu**[3], **State of Punjab v Sadhu Ram**[4], and **Chandragauda Ramagonda Patil v State of Maharashtra**[5], summarised the principles as under:

(a) The land acquired under the provisions of the Act for one public purpose, after putting it to the said public purpose partly or fully, if surplus land remains, can be utilized either partly or fully for any other public purpose;

(b) When the land absolutely vests free from encumbrances, the same shall be treated as Government land subject to all legislations, rules and executive instructions touching upon the assignment of land for other purpose and for landless poor;

(c) The owners of the land whose land is acquired have no right, legal entitlement or legitimate expectation in seeking reconveyance of the land at the price at which compensation was paid under the award under Section 11 of the Act;

(d) If the Government, as a policy decides that the land acquired is not partly or fully utilized for the public purpose for which it was acquired, is no more required for any public purpose, either because it is not suitable or because it has become waste land, the Government is bound to deal the property like any other Government property and dispose of the same in the manner which sub-serves public interest. The sale of Government land by public auction or by calling for tenders and disposing of the same to the highest bidder is the most transparent and best method of sub-serving public interest;

(e) The power of the Government to dispose of the surplus land acquired by public auction also enables to permit original land owners to participate in the public auction and offer appropriate highest bid;

(f) In any event, any claim by the original land owners or their legal heirs for reconveying cannot be entertained after a long lapse of time, say 10 years, 20 years or 30

years;

(g) If the Government decides to assign the surplus acquired land to landless poor persons as a measure of poverty amelioration, the method of public auction need not be adopted.

In the recent judgment in **Northern Indian Glass Industries v Jaswant Singh**[6] after referring to **Gulam Mustafa v State of Maharashtra**[7], **Chandragauda Ramgonda Patil v State of Maharashtra** (supra) and **C.Padma v Deputy Secretary to the Government of Tamil Nadu** (supra), Supreme Court held that, "if the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land".

Learned counsel for petitioners lays considerable emphasis on Section 54-A of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F (Land Revenue Act, for brevity) which provided for allotting the acquired land, which is no more required for the purpose, to the owner or the successor on refund of compensation received by him. The submission, however, cannot be accepted. In **Koppula Narasaiah** (supra), this Court decided this matter and held as under.

> The other aspect of the matter is Section 54-A of the Telangana Act is applicable only in respect agricultural and pasture lands acquired for public purpose. The petitioner does not explain it as to how the land acquired in 1969 and 1970 for the purpose of NSP continued to be agricultural and pasture lands. Indeed, in some of these cases the petitioner's land was acquired in Khammam District. Those lands are within urban limits of the town. In my considered opinion, when once the agricultural land is acquired for any non-agricultural purpose for being used to any public benefit the same by law shall be deemed to have lost its character of being agricultural or pasture land and Section 54-A of the Telangana Act is not applicable to such land. For instance, if the land is acquired for construction of school building or industry or for providing housing colony and if any part of the land is not utilised for the said purpose, can it be said that still the surplus land continues to be agricultural land? Such interpretation of treating unutilised agricultural land as agricultural land would be contrary to the very spirit of Chapter-V, especially Sections 54 and 54-A of the Telangana Act as well as the Land Acquisition Act.

In a recent Judgment in **Government of A.P., v Syed Akbar**[8], Supreme Court while dealing with similar argument raised under Section 54-A of Land Revenue Act held as under.

Chapter V of the Act deals with occupation of *khalsa* land and right of occupant. Under Section 54, procedure is prescribed for acquiring unoccupied land. This section enables a person to submit a petition to the Tahsildar if he is desirous of taking unoccupied land. On such application, the Tahsildar may in accordance with the rules made by the Government give permission in writing for occupation. **Section 54-A indicates the procedure in respect of land acquired for the purpose of public benefit and which is no more required. It is clear from plain and clear language of the said section that when an agricultural land acquired for public benefit is no longer required, the *patta* thereof shall be made in the name of the person or his successor from whom such land was acquired provided he consents to refund the compensation originally paid to him. This section does not say that the agricultural land acquired for public benefit is no longer required for the purpose for which it is acquired. This section can be attracted only in a case where agricultural land acquired for public benefit is no longer required not necessarily for the specific purpose for which it was acquired. Added to this, that the land is no more required is a decision required to be made by the competent authority.** As in the present case, mere letter of the Resident Engineer that the unused land is no more required is not enough. When the land is acquired under the Land Acquisition Act which is vested in the State Government free from all encumbrances, the question of reconveying the land as claimed by the respondent could not be accepted in view of the clear position of law stated in the decisions of this Court aforementioned. Whether the unused remaining land out of the acquired land was sufficient or not for the purpose of construction of Mandal Revenue Office could not be decided by the High Court.

In view of the above, notwithstanding the power of the State to resume land from third respondent in their discretion, petitioners cannot be said to have any locus to challenge the Government Order extending time limit for utilisation of the land nor they have an enforceable right to seek a writ of Mandamus for reconveyance of the land.

The writ petition is misconceived and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

17.11.2006
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Note: LR copy be marked.

(By order)

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[1] AIR 1997 SC 2703

[2] 2000 (6) ALT 337 = 2000 (6) ALD 299

[3] (1997) 2 SCC 627

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